S.B. CIVIL WRIT PETITON NO.5056/2004.
Manoj Kumar Vs. State of Rajasthan & Ors.

Date of Order :: 16th July 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Ms. Nupur Bhati, for the petitioner.
Mr. M.L. Khatri, for the respondents.

By way of this writ petition, the petitioner has sought the relief of directions against the respondents to consider his candidature for appointment on the post of Sweeper with the Municipal Board, Barmer on two fold grounds : one, that he is entitled to be considered for compassionate appointment for his father having died on 16.10.1996 while holding the post of Sweeper with the respondent No.3; and second, that he was denied appointment in the selections made on 17.05.2004 in contravention of the guidelines issued by the State Government on 13.01.2003 and 12.09.2003. In the second limb of grounds, according to the petitioner, he was entitled for preference in selections because (a) his application for compassionate appointment was pending; (b) he is possessed of experience of service on the post of Sweeper; and (c) he is a member of Valmiki Samaj.

Briefly put, the petitioner has averred in the writ petition that his father died on 16.10.1996 while holding the post of Sweeper; that immediately after the demise of his father he

moved an application for compassionate appointment and his mother also extended no objection in writing on 30.10.1996; (Annex2); and that the respondent No.3 Executive Officer of the Municipality addressed a communication (Annex-3) to the respondent No.2, the Director, Local Self Department seeking permission for petitioner's appointment as per the Rajasthan Recruitment of Dependants of Government Servants Dying While in Service Rules 1975 ('the Rules of 1975'). The petitioner has alleged that he made several representations to the respondents for providing him compassionate appointment in place of his deceased father for his having requisite qualification but failed to evoke any response. The petitioner has furher alleged that the respondent kept sitting tight over the matter but as and when personally approached, assured that upon occurrence of vacancy, his case would be considered. The petitioner has raised the grievance that on one hand he was denied compassionate appointment and on the other hand one Shri Mahendra Kumar and another Smt. Savita Devi were extended such appointments under the order dated 27.07.1998 (Annex.5). The petitioner has also made an averment that he was appointed as sweeper on daily wages (contract) basis and rendered his services from 01.02.1997 to 31.10.1997 but thereafter his services were terminated.

The petitioner has referred to the guidelines issued by the respondents on 13.01.2003 (Annex.6) for filling up the vacancies of Safai Karamcharies and another order issued by the State Government on 12.09.2003 (Annex.7) for preference in such appointments to the persons belonging to Valmiki Samaj. The petitioner has averred that the respondent issued an advertisement in the local newspaper calling the applications for the post of Sweepers; that he too applied in pursuance of the advertisement within time and his application was accepted under Receipt No.306 (Annex.9); that he appeared for interview before the respondents and after interview, the respondents issued the list of selected candidates on 17.05.2004 (Annex.10) wherein the name of respondent No.4 has been shown at Sl.No.30 and that of respondent No.5 at Sl. No.45; and that though the petitioner is falling in the criteria laid down by the respondents in their guidelines dated 13.01.2003 and 12.09.2003 but the respondents have not considered his candidature in an illegal manner. The petitioner has also raised the grievance that he applied for the record of services rendered by him on daily wages for about 240 days under his application dated 31.05.2004 (Annex.11) but the respondents orally refused the same. The petitioner has made a written representation on 21.07.2004 (Annex.12) requesting the respondent for

providing him compassionate appointment and has filed this writ petition stating to be aggrieved of the illegal and arbitrary action of the respondents for having not provided him compassionate appointment.

The petitioner has urged the grounds that he is fully eligible and entitled for compassionate appointment for his father having died on 16.10.1996 when the Rules of 1975 were in force. According to the petitioner, the object of giving compassionate appointment is to support the bereaved family in sudden crisis and to extend financial assistance to the family but the respondents have not taken any pain and the petitioner was being deprived of appointment without any fault on his part.

While referring to the orders and guidelines issued by the State Government, the petitioner has contended that due preference has to be given to the dependants of the deceased employee who had died while in service and the application for compassionate appointment was pending; secondly, appropriate preference has to be given to the experience holder with regard to the services rendered by him; and thirdly, the persons belonging to Valmiki Samaj are to be given preference in such appointments. According to the petitioner, on all these scores he was entitled to be offered appointment in priority and preferentially.

The petitioner has also raised a ground of discrimination that similarly situated persons were extended compassionate appointment prior to the selection process whereas he was denied appointment on the ground of non-availability of vacancies. It has also been stated that the mother of said Shri Mahendra Kumar was also working as Sweeper in the respondent-department. The petitioner has urged that even if it be assumed that his family member was working with the respondent, since his father expired on 16.10.1996, i.e., prior to coming into force of the Rules of 1996 in place of Rules of 1975 on 31.12.1996, his case ought to be considered in the first category of preference.

The respondent No.3 has filed a reply to show cause notice and, while admitting the fact that the father of the petitioner died on 16.10.1996 while serving on the post of Sweeper, has pointed out that the wife of the deceased, i.e., mother of the petitioner, is already in employment with the answering respondent and, thus, the petitioner is not entitled for compassionate appointment. It has further been pointed out that elder brother of the petitioner is also serving with the answering respondent. The respondents have contended that the petitioner is not entitled for compassionate appointment whether under the Rules of 1975 or under the Rules of 1996. Assertion of the petitioner claiming preference in the matter of

selections has been denied for his being not entitled for any compassionate appointment. The fact regarding his earlier engagement on contract basis as stated in paragraph 8 of the writ petition has also been denied as incorrect. The respondent has contended that selections have been made strictly in terms of the guidelines and the rules.

Arguing for the petitioner, learned counsel Ms. Nupur Bhati has strenuously contended that the petitioner's claim for compassionate appointment has been ignored by the respondents for no valid reason; and under the Rules of 1975, the petitioner was entitled for appointment in place of his deceased father. Learned counsel further submitted that the application of the petitioner for compassionate appointment was pending and then, for his belonging to Valmiki Samaj, he was entitled to be considered for appointment in preference over other candidates; and denial by the respondents is contrary to the guidelines.

Having examined the matter in its totality, this Court is satisfied that the petitioner is not entitled for any relief and the writ petition remains bereft of substance.

The prayer made by the petitioner for directions to the respondents to consider his candidature for compassionate appointment remains fundamentally baseless. The very object of appointment of a dependant of the deceased employee who

died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the bread-earner of the family. Compassionate appointment, an exception to the general rule of open recruitment, is intended only to meet the immediate financial problems, if so faced, by the bereaved family. The Hon'ble Supreme Court in the case of Director of Education (Secondary) Vs. Pushpendra Kumar : (1998) 5 SCC 192 has pointed out thus:

> "The object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependent of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions of making appointment by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would

> have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee."

In the fact situation of the present case, noticeable it is that the family cannot be said to be under such distress where the only bread-earner of the family passes away. The core fact stated in the reply that the mother and elder brother are already serving with the answering respondent have not been put to contention on behalf of the petitioner. When at least two members of the petitioner's family are already in employment with the same Municipality, the respondents cannot be said to have committed any illegality in not acceding to the prayer for compassionate appointment as made by the petitioner and as endorsed by the Executive Officer of the Municipal Board under his recommendation dated 17.04.1997 (Annex.4).

It is noticed that the fact that the mother and so also the elder brother of the petitioner are already in service has not even been stated in specific terms in the writ petition. The only suggestion made in the writ petition is as stated in sub-paragraph (vi) of paragraph 16 wherein the petitioner has taken the ground that even if it be 'assumed' that the petitioner 'has a family member working with the respondents', yet there is no difficulty in consideration of his case because the Rules of 1975 apply. The fact that not one but two

members of the family are already in employment has only been avoided to be stated by the petitioner. It is apparent that the petitioner has not been forthright in his submissions before this Court and the present one hardly appears to be case for exercise of writ jurisdiction.

A feeble suggestion made in the writ petition about discrimination with reference to compassionate appointments of Mahendra Kumar and Savita Devi remains entirely baseless and of little avail. No details concerning such person is available on record and even if it be taken correct that the said Mahendra Kumar was accorded compassionate appointment despite his mother being in service, and if there was any irregularity in his appointment, it would hardly invest the petitioner with any right to claim compassionate appointment.

It is also noteworthy that while the Executive Officer made the recommendation on 14.07.1997 (Annex.3), it was pointed out that the wife of the deceased employee, i.e., mother of the petitioner, was working on the post of Safai Karamchari; and there is no mention about the elder son of the deceased being in service. It has not been clarified by the petitioner as to when and how his elder brother entered into the service?

So far the claim of preference in the selections made

under the advertisement (Annex.8) with reference to the guidelines dated 13.01.2003 and 12.09.2003 is concerned, this Court is clearly of opinion that the application made by the petitioner for compassionate appointment could only be treated as non-est for two members of the family being already in service. It would rather be travesty of justice if the guidelines are to be operated without regard to the object and implications of the propositions concerning preferences. In the matter of open selections, even if the guidelines stated a proposition for giving preference to an applicant whose claim for compassionate appointment was pending, such preference cannot be accorded on the basis of an incompetent and baseless application for compassionate appointment, like that of the present petitioner. Prior to the issuance of such guidelines and the advertisement for selections in question, Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rules, 1996 had already replaced the Rules of 1975; and the petitioner was not entitled for compassionate appointment in view of the prohibition contained in Rule 5 of the Rules of 1996 that for consideration of such compassionate appointment, other dependent as spelt out in the said Rule be not in service, except when compassionate appointment was claimed by the widow of the deceased employee. When the petitioner was not entitled for

compassionate appointment and his application could only be treated as non-est, there could arise no question of according any preference to the petitioner so as to deprive other eligible candidates of their rights of consideration.

So far the preference to the members of Valmiki Samaj is concerned, a look at the select list (Annex.10) makes it clear that 45 persons have been selected and only three of them belong to Other Backward Classes (OBC) and two of them belong to Scheduled Tribes (ST). It is obvious that out of 45 persons, 40 persons have been given due preference as per the suggestion stated in the communication dated 12.09.2003 (Annex.7) that in the new recruitment of Safai Karamcharies, so far as possible, Valmiki Samaj be given preference. The respondents appear to have proceeded in accordance with their guidelines and in any case, there does not appear any ground for which the petitioner's candidature ought to be considered over and above other eligible persons.

A suggestion has been made in the writ petition about the petitioner having rendered his services from 01.02.1997 to 31.10.1997 on daily wage basis and that his application for supplying him the particulars of his services has been denied in an arbitrary manner. It is noticed that such application without stating the date and period of his working was made by the petitioner only on 31.05.2004, i.e., after the select list

(Annex.10) was issued on 17.05.2004. Apart from the fact that the respondents have denied such assertion of past services of the petitioner, the fact remains that in the application contemplated under the advertisement dated 22.07.2003 (Annex.8), an applicant was required to state the particulars of his past services if he had worked on daily wage basis, and if he had completed 240 days of service (vide Clauses 7 and 9 of the application form). The petitioner has admittedly applied under the said advertisement dated 22.07.2003. If the petitioner had rendered any service earlier, the same was definitely required to be stated with necessary proof in the said application. It is not the case of the petitioner that he stated any such particulars in the application with necessary proof; and if at all he had done so, then asking of the particulars of past service on 31.05.2004 (Annex.11) is nothing but superfluous, rather an eye-wash.

Viewed from all angles, this Court is satisfied that the petitioner only seeks to claim appointment on the basis of some claim of preference after having otherwise been unsuccessful in open selections. There does not appear any cause to issue any writ, order or direction in this matter.

The writ petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI), J.

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